

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

SARVJIT SINGH,

Defendant.

* * * * *

Case No. 09-CR-824 (SJ)

Brooklyn, New York

May 19, 2010

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

SOUMYA DAYANANDA, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

BRUNO CHARLES BIER, ESQ.
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

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1 (Proceedings commenced at 12:12 p.m.)

2 THE CLERK: This is a criminal cause for a pleading
3 in docket number 09-CR-824, the United States of America
4 against Sarvjit Singh.

5 Counsel, please state your appearances for the
6 record.

7 MS. DAYANANDA: Good afternoon, Your Honor. Soumya
8 Dayananda for the government along with Andrew Goldsmith,
9 also for the government.

10 MR. BIER: Bruno Bier on behalf of Sarvjit Singh.
11 Good morning -- good afternoon.

12 THE COURT: Good afternoon. Welcome to all of you.
13 Please be seated. This is on for a guilty plea. It's been
14 referred to me by Judge Johnson.

15 Mr. Singh, I have before me a document entitled
16 consent to have a plea taken before a United States
17 Magistrate Judge.

18 Is that your signature on the defendant's signature
19 line?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you read this document and
22 discussed it with your attorney?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand what you've agreed to
25 by signing this document?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I want to make sure that you do
3 understand. This is Judge Johnson's case. He's a United
4 States District Court Judge and he's the judge who will
5 sentence you and make the ultimate decision as to whether to
6 accept your guilty plea.

7 If you wish, you have the absolute right to have
8 Judge Johnson listen to your plea and if you choose to do
9 that, there'll be no prejudice to you.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: On the other hand if you wish I will
13 listen to your plea. I'm a United States Magistrate Judge.

14 This proceeding is being recorded. A transcript
15 will be made of the proceeding and Judge Johnson will review
16 it before deciding whether to accept your plea. He'll also
17 review it in connection with your sentence.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Understanding what I've just said to
21 you, do you wish to give up your right to have Judge Johnson
22 listen to your plea and proceed instead before me at this
23 time?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And Mr. Bier, I'm going to ask would

1 you please move the microphone closer to your client because
2 he has a soft voice.

3 Mr. Singh, do you make this decision voluntarily
4 and of your own free will?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Have any threats or promises been made
7 to you to induce you to agree to have me hear your plea?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: I find that the defendant's consent is
10 knowing, intelligent and voluntary. Mr. Singh, before
11 accepting your guilty plea there are a number of questions
12 that I have to ask to make sure that it's a valid plea.

13 If you don't understand any of my questions, please
14 say so and I'll re-word the question. Mr. Mariadason, would
15 you please swear the defendant?

16 (The defendant is sworn.)

17 THE CLERK: Please state your full name and spell
18 your last name for the record.

19 THE DEFENDANT: Singh, S-I-N-G-H.

20 THE COURT: And your first name?

21 THE DEFENDANT: Sarvjit, S-A-R-V-J-I-T.

22 THE CLERK: Thank you.

23 THE COURT: Thank you. Please be seated. Mr.
24 Singh, you should understand that having been sworn, your
25 answers to my questions will be subject to the penalties of

1 perjury if you do not answer truthfully. Do you understand
2 that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Mr. Singh, how old are you?

5 THE DEFENDANT: 55 years old.

6 THE COURT: And I understand that you received a
7 law degree in India. Is that correct?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: So you're a college graduate and a law
10 school graduate?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And you appear to be fluent in English.
13 Is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you had any difficulty
16 communicating with your attorney?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Mr. Bier, have you had any difficulty
19 communicating with Mr. Singh?

20 MR. BIER: No, Your Honor.

21 THE COURT: Mr. Singh, are you now or have you
22 recently been under the care of a doctor or psychiatrist?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: In the past 24 hours, have you taken
25 any drugs, narcotics, medicine or pills or drunk any

1 alcoholic beverages?

2 THE DEFENDANT: I took blood pressure medication.

3 THE COURT: And you're under treatment for high
4 blood pressure?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And when did you take that medication?

7 THE DEFENDANT: Last night.

8 THE COURT: Last night?

9 THE DEFENDANT: Last night.

10 THE COURT: And that's medication prescribed by
11 your physician?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you took the prescribed amount?

14 THE DEFENDANT: Yes.

15 THE COURT: And other than your prescribed blood
16 pressure medication, have you taken any other medicine or
17 pills or had any alcoholic beverages or narcotics or drugs in
18 the last 24 hours?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have you ever been hospitalized or
21 treated for narcotic addiction or for any mental or emotional
22 problem?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Is your mind clear now?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand what's going on here
2 now?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Mr. Bier, have you discussed the matter
5 of pleading guilty with your client?

6 MR. BIER: Yes, I have.

7 THE COURT: In your view does he understand the
8 rights he'll be waiving by pleading guilty?

9 MR. BIER: Yes, he does.

10 THE COURT: I'm going to ask you to keep your voice
11 up as well.

12 Is Mr. Singh capable of understanding the nature of
13 these proceedings?

14 MR. BIER: Yes, he is.

15 THE COURT: Do you have any doubt as to his
16 competence to plead at this time?

17 MR. BIER: No, I don't.

18 THE COURT: Have you advised him of the maximum
19 sentence and fine that can be imposed and have you discussed
20 with him the effect of the sentencing guidelines?

21 MR. BIER: Yes, I have.

22 THE COURT: Mr. Singh, have you discussed your case
23 with Mr. Bier and are you satisfied to have him represent
24 you?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Have you received a copy of the
2 superceding indictment that's been filed against you?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Have you consulted with Mr. Bier about
5 the superceding indictment?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I understand that you're prepared to
8 plead guilty to Count 2 of the superceding indictment.

9 That count alleges in substance that on
10 approximately May 9th of 2005, you and others knowingly
11 presented an application and other documents required by the
12 immigration laws and regulations, specifically a Form I-687
13 and accompanying documents which contained a false statement
14 with respect to a material fact, that is that the client
15 referred to in that document entered the United States prior
16 to January 1st, 1982 when in fact as you then and there well
17 knew and believed the client did not enter the United States
18 before January 1st, 1982.

19 In order to prove you guilty of that offense, the
20 government would have to prove the following beyond a
21 reasonable doubt.

22 First, that on the approximate date alleged in
23 Count 2, you were involved in presenting an application or
24 other document required by the immigration laws and
25 regulations, specifically a Form I-687 and accompanying

1 documents. The government would not have to prove that you
2 yourself presented it or prepared it if you were involved in
3 the preparation and -- of that document and that you
4 knowingly were involved.

5 Second, the government would have to prove that the
6 document contained a false statement with respect to a fact
7 that was material to that -- to the application and it's
8 alleged here that the false statement was that the client
9 referred to in the documents entered the United States before
10 1982 when in fact as you knew he had not entered before 1982.

11 Fourth, the government would have to prove that you
12 acted knowingly and intentionally and not because of some
13 mistake or innocent reason.

14 Do you understand that charge?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And have you discussed that charge with
17 your attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: I now want to talk with you about the
20 rights that you will be giving up by pleading guilty, but the
21 first and most important thing you have to understand is that
22 you have an absolute right to plead not guilty. Do you
23 understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: If you plead not guilty, then under the

1 Constitution and laws of the United States, you're entitled
2 to a speedy and public trial by jury with the assistance of
3 counsel on the charges contained in the superceding
4 indictment. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: At the trial, you would be presumed to
7 be innocent and the government would have to overcome that
8 presumption and prove you guilty by competent evidence and
9 beyond a reasonable doubt.

10 You would not have to prove that you were innocent
11 and if the government failed to prove you guilty beyond a
12 reasonable doubt, the jury would have the duty to find you
13 not guilty.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: In the course of the trial the
17 witnesses for the government would have to come to court and
18 testify in your presence and your attorney would have the
19 right to cross-examine the witnesses for the government, to
20 object to evidence offered by the government and to offer
21 evidence on your behalf.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: At a trial, while you would have the
25 right to testify if you chose to do so, you could not be

1 required to testify.

2 Under the Constitution of the United States, you
3 cannot be compelled to incriminate yourself. If you decided
4 not to testify, the Court would at your lawyer's request
5 instruct the jurors that they could not hold that against
6 you. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If you plead guilty and the Court
9 accepts your plea, you'll be giving up your Constitutional
10 right to a trial and the other rights that I've just
11 discussed. There'll be no further trial of any kind and no
12 right of appeal from the judgment of guilty. The Court will
13 simply enter a judgment of guilty on the basis of your guilty
14 plea. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And specifically, I want you to
17 understand that the objection that your lawyer has filed to
18 my report and recommendation that your motion to dismiss and
19 suppress be denied you would be giving up your right to
20 pursue that -- those arguments either before Judge Johnson or
21 before a higher court -- an appellate court. Do you
22 understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: If you plead guilty, I'll have to ask
25 you questions about what you did in order to satisfy myself

1 and Judge Johnson that you are in fact guilty of the charge
2 to which you seek to plead guilty, and you'll have to answer
3 my questions and admit your guilt.

4 In that way, you'll be giving up your right not to
5 incriminate yourself. Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are you willing to give up your right
8 to a trial and the other rights that I've just discussed?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: I have before me a plea agreement
11 that's been marked Court Exhibit 1. Turning to the last page
12 of that document, is that your signature on the defendant's
13 signature line?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you read this entire document and
16 discussed it with your attorney?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand all the terms and
19 conditions of this agreement?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Does this document fully and accurately
22 reflect your understanding of the agreement you've reached
23 with the government concerning your guilty plea?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Other than the promises contained in

1 this document, has anyone made any promise that has caused
2 you to plead guilty?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Has anyone made any promise to you as
5 to what your sentence will be?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: I now want to talk with you about the
8 sentencing scheme that's applicable here. The statute that
9 you're accused of violating in Count 2 carries a prison term
10 of up to ten years. Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: In addition to a prison term, the
13 sentencing court can also impose a supervised release term of
14 up to three years.

15 The supervised release term would follow any term
16 of imprisonment and if you violated a condition of supervised
17 release, you could then be sent back to prison for up to an
18 additional two years regardless of how much time you may
19 already have spent in prison or on post-release supervision.
20 Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: In addition to a prison term and a
23 supervised release term, the sentencing court can also impose
24 a fine of up to \$250,000. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: The sentencing court will impose a
2 mandatory \$100 special assessment. Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Another consequence that will result
5 from your conviction is deportation or removal from the
6 United States. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: I now want to talk with you about the
9 sentencing guidelines. Under the Sentencing Reform Act of
10 1984, the United States Sentencing Commission has issued
11 guidelines for judges to consider in determining the sentence
12 in a criminal case. The guidelines are advisory. They're
13 not mandatory.

14 However, the sentencing court is required to
15 consider the guidelines in determining what is a reasonable
16 sentence in a particular case. Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have you and Mr. Bier talked about how
19 the guidelines might apply to your case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You should understand that Judge
22 Johnson will not be able to do the guideline calculation for
23 your case until after the Probation Department has prepared a
24 pre-sentence report and you and your attorney have had an
25 opportunity to read it and to challenge the facts reported by

1 the Probation Officer. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You should also understand that after
4 it's been determined what guideline applies to a case, the
5 judge has the authority to impose a sentence that is more
6 severe or less severe than the sentence called for by the
7 guidelines, depending on what is a reasonable sentence. Do
8 you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: I'm now going to ask the attorneys to
11 give their best estimate of what the guideline range of
12 imprisonment is likely to be, but I want you to keep in mind
13 that the attorneys' estimates are not binding upon Judge
14 Johnson, even if both your lawyer and the prosecutors happen
15 to be in agreement. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: I take it the government's calculations
18 are set forth in paragraph 2 of the agreement?

19 MS. DAYANANDA: That's correct, Judge.

20 THE COURT: And you've calculated an adjusted
21 offense level of 10 which carries a range of imprisonment of
22 six to 12 months, assuming Mr. Singh has no prior
23 convictions. Correct?

24 MS. DAYANANDA: That's correct.

25 THE COURT: And Mr. Bier, have you done your own

1 calculation under the guidelines?

2 MR. BIER: Yes. And I concur with the government's
3 estimate.

4 THE COURT: All right. And again, Mr. Singh, it
5 will be up to Judge Johnson to do his own calculation under
6 the guidelines to determine the guideline range of
7 imprisonment and then to decide whether or not to sentence
8 you within that range. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: I want to point out a particular
11 provision of this agreement. Paragraph 4 provides in
12 substance and in part that you will not file an appeal or
13 otherwise challenge your conviction or sentence in the event
14 the court imposes a term of imprisonment of 12 months or
15 below.

16 Now under this agreement, you and your lawyer are
17 free to argue before you're sentenced that you should not be
18 sent to prison for as long as 12 months. In fact, under this
19 agreement, you and your lawyer can ask Judge Johnson to
20 sentence you below the guideline range and to sentence you to
21 no prison time.

22 Alternatively or in addition, you could argue that
23 if he sentences you within the guideline range, he should
24 sentence you at the low end of the range rather than the
25 upper end of the range.

1 All of these arguments and other good faith
2 arguments are available to you and your lawyer before Judge
3 Johnson sentences you.

4 However, once he does sentence you, as long as he
5 does not send you to prison for more than a year, that is the
6 end of the matter. You've agreed that you won't file an
7 appeal or challenge your conviction or sentence as long as
8 the term of imprisonment does not exceed 12 months. Do you
9 understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You should also understand that parole
12 has been abolished and that if you're sentenced to prison,
13 you will not be released on parole. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you have any questions that you'd
16 like to ask me about the charge, your rights or anything else
17 relating to this matter?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Are you ready to plead?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Mr. Bier, do you know any reason why
22 Mr. Singh should not plead guilty?

23 MR. BIER: No, I don't.

24 THE COURT: Are you aware of any viable legal
25 defense to the charge?

1 MR. BIER: No, I don't.

2 THE COURT: Mr. Singh, what is your plea to Count 2
3 of the superceding indictment? Guilty or not guilty?

4 THE DEFENDANT: Guilty, Your Honor.

5 THE COURT: Are you making this plea of guilty
6 voluntarily and of your own free will?

7 THE DEFENDANT: Voluntarily, Your Honor.

8 THE COURT: Has anyone threatened or forced you to
9 plead guilty?

10 THE DEFENDANT: Not, Your Honor.

11 THE COURT: Other than the agreement with the
12 government marked Court Exhibit 1, has anyone made any
13 promise that has caused you to plead guilty?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Has anyone made any promise as to what
16 your sentence will be?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Again, Count 2 charges you with visa
19 fraud. Specifically, it alleges that on approximately
20 May 9th of 2005, you and others knowingly presented a Form
21 1-687 and accompanying documents which contained a false
22 statement with respect to a material fact, specifically that
23 the client referred to in the documents entered the United
24 States prior to 1982 when you in fact knew and believed that
25 the client had not entered the United States before 1982.

1 Did you, in fact, engage in that conduct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Would you tell me in your own words
4 what you did that makes you guilty of that offense?

5 THE DEFENDANT: This person came to me and I was
6 working with Mr. Archer. I referred this person to Mr.
7 Archer, knowing that Mr. Archer is doing false applications
8 of 687.

9 THE COURT: And I'm sorry. I couldn't hear
10 everything you said. You referred a client to Mr. Archer who
11 was an immigration lawyer?

12 THE DEFENDANT: Yes. And I knew that Mr. Archer
13 was doing these -- submitting these false applications to the
14 immigration.

15 THE COURT: He was doing these false applications
16 and then I couldn't hear what you said.

17 MR. DAYANANDA: I believe he said to immigration.

18 THE COURT: Oh. To immigration authorities?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And did you know that -- and did this
21 happen in early May of 2005?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And did you know that the client who
24 you were referring to Mr. Archer had not entered the United
25 States before 1982?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And did you know that in order to make
3 an application on a Form I-687 the person would have to have
4 entered the United States before 1982?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And were you aware that Mr. Archer was
7 going to prepare an I-687 Form that falsely stated that the
8 client had entered the United States before 1982?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you were doing that to assist him
11 in this illegal activity?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you knew it was wrong to do that?
14 You knew it was wrong to do that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And just very generally, where did this
17 happen? In Queens? Brooklyn?

18 THE DEFENDANT: Queens.

19 THE COURT: Is there any further inquiry the
20 government would like me to make of the defendant?

21 MS. DAYANANDA: No, Your Honor.

22 THE COURT: Based on the information provided to
23 me, I find that Mr. Singh is acting voluntarily, that he
24 fully understands his rights and the consequences of his plea
25 and that there is a factual basis for the plea.

1 I therefore recommend acceptance of the plea of
2 guilty to Count 2 of the superceding indictment. We have a
3 date for sentence but I -- September 24th at 9:30 a.m. before
4 Judge Johnson.

5 Mr. Singh, in the meantime the Probation Department
6 will be preparing a pre-sentence report. I urge you to
7 cooperate with the Probation Officer.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is there anything further?

10 MS. DAYANANDA: Not from the government.

11 THE COURT: Okay. Thank you very much.

12 MS. DAYANANDA: Thank you.

13 (Proceedings concluded at 12:44 p.m.)

14 I, CHRISTINE FIORE, court-approved transcriber and
15 certified electronic reporter and transcriber, certify that
16 the foregoing is a correct transcript from the official
17 electronic sound recording of the proceedings in the above-
18 entitled matter.

19 
20

21 June 22, 2010

22 _____
23 Christine Fiore, CERT
24